

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

**DEAN SCHIRMER AND WIFE,
MICHELLE SCHIRMER**

vs.

STATE FARM LLOYDS

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§

CIVIL ACTION NO. _____

DEFENDANT'S NOTICE OF REMOVAL

Defendant State Farm Lloyds files this Notice of Removal, because diversity of citizenship jurisdiction exists under 28 U.S.C. § 1332.

PROCEDURAL BACKGROUND

1. On August 9, 2019, Dean Schirmer and Michelle Schirmer filed Plaintiffs' Original Petition against State Farm Lloyds in Cause No. B190296-C in the 163rd Judicial District Court of Orange County, Texas.
2. State Farm Lloyds was served with Citation and a copy of Plaintiffs' Original Petition on September 16, 2019. The statutory deadline to remove this action under 28 U.S.C § 1446(b)(1) is 30 days after Defendant's receipt of the initial pleading, in this case, October 16, 2019.
3. State Farm Lloyds timely files this Notice of Removal under 28 U.S.C. § 1446, to remove the State Court Action from the 163rd Judicial District Court of Orange County, Texas, to the U.S. District Court for the Eastern District of Texas, Beaumont Division.
4. State Farm Lloyds filed its Original Answer on October 3, 2019.
5. Plaintiffs' Original Petition filed in the State Court Action included a jury demand and indicates that the jury fee has been tendered.

NATURE OF THE SUIT

6. This lawsuit involves a dispute over the handling and alleged under-payment of Plaintiffs' claim for damages allegedly caused by Hurricane Harvey on or about August 29, 2017.¹ Plaintiffs assert causes of action against State Farm Lloyds for: (1) breach of the insurance contract; (2) violations of the Prompt Payment of Claims Act; and (3) violations of the Texas Insurance Code.²

BASIS FOR REMOVAL

7. The Court has jurisdiction over this action under 28 U.S.C. § 1332 because there is and was complete diversity between all parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

A. Diversity of the Parties

8. Removal is proper because there is and was complete diversity between the parties under 28 U.S.C. § 1332 both at the time of the filing of Plaintiffs' Original Petition and at the time of its removal to this Court.

9. Plaintiffs were, at the time of filing this lawsuit, and still are, citizens of Orange County, Texas, and reside in Orange County, Texas.³

10. State Farm Lloyds was at the time this action was commenced, and still is, a citizen of Illinois. State Farm Lloyds is a "Lloyds Plan" organized under Chapter 941 of the Texas Insurance Code. It consists of an unincorporated association of underwriters who were at the time this action was commenced, and still are, all citizens and residents of Illinois, thereby making State Farm Lloyds a citizen of Illinois for diversity purposes.⁴

¹ Plaintiffs' Original Petition

² *Id.*

³ *Id.*

⁴ *See Royal Ins. Co. of Am. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882-83 (5th Cir. 1993) (citizenship of unincorporated association determined by citizenship of members).

B. Amount in Controversy

11. The value of the matter in controversy exceeds \$75,000.00, exclusive of interest and costs. Plaintiffs' Petition further seeks damages of any kind, penalties, costs, expenses, pre-judgment and post-judgment interest, and attorneys' fees.⁵

REMOVAL IS PROCEDURALLY CORRECT

12. Defendant State Farm Lloyds was served with process on September 16, 2019, and has entered an appearance in the State Court Action. Therefore, defendant filed this notice of removal within the 30-day time period required by 28 U.S.C. § 1446(b).

13. Venue is proper in this division under 28 U.S.C. §1441(a) because this district and division embrace the place in which the removed action has been pending.

14. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon State Farm Lloyds in the State Court Action are attached to this notice as Exhibit B.

15. Additionally, all documents required by Local Rule 81 to be filed with this Notice of Removal are attached and indexed.

16. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will promptly be given to all parties and to the clerk of the 163rd Judicial District Court of Orange County, Texas.

ATTACHMENTS

17. Pursuant to 28 U.S.C. § 1446(a), Local Rule 3, and Local Rule 81, the following exhibits are attached hereto and incorporated herein by reference for all purposes:

- a. Exhibit A: Certified copy of the state court docket sheet;
- b. Exhibit B: Index and copies of pleadings, answers, processes and orders;

⁵ Plaintiffs' Original Petition

- c. Exhibit C: List of parties and counsel;
- d. Exhibit D: Record of parties requesting trial by jury; and
- e. Exhibit E: Statement regarding case status.

JURY DEMAND

18. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, State Farm Lloyds demands a trial by jury.

PRAYER

19. Defendant respectfully requests that the State Court Action be removed and placed on this Court's docket for further proceedings. Defendant also requests any additional relief to which it may be entitled.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT,
STATE FARM LLOYDS**

CERTIFICATE OF SERVICE

I hereby certify that on this 15th of October, 2019, a copy of the foregoing document has been served via efile.txcourts.gov on:

David Dies
DIES LAW OFFICES
1703 Strickland Drive
Orange, Texas 77630

S. Donean Surratt
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